84-1729

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ALEXANDER L. STEVAS,
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 1985 TERM

FRANK SATTERFIELD and JIM SATTERFIELD, and their respective maritial communities,
Petitioners,

vs.

RICHARD S. HUEBNER and IRENE HUEBNER, husband and wife,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

LAW OFFICES OF
CRANE, STAMPER, BOESE,
DUNHAM & ROGERS

By DOUGLAS S. DUNHAM

Office Address:
350 Grand Central on the Park
Seattle, Washington 98104

QUESTIONS PRESENTED

1. Whether the trial court's assertion of personal jurisdiction over the corporate employees, Frank and Jim Satterfield, was consistent with traditional notions of fair play and substantial notice required by the Due Process Clause of the United States Constitution, where:

a. Frank Satterfield's sole contact with Washington in regard to the subject of this litigation was several telephone conversations with the plaintiff, and a mailing of an agreement, Frank Satterfield never having been to Washington, nor owning property in Washington, nor having any proprietary

interest in either the agreement with plaintiff or in the corporations involved, nor having signed the agreement, and where Frank Satterfield was not responsible for the non-registration of a franchise that gave rise to plaintiff's damages?

b. Jim Satterfield's sole contacts with Washington in regard to the subject of this litigation was arranging on behalf of the corporate defendant for placement of an advertisement in a national publication and his signing of the agreement on behalf of the corporate defendant?

c. Both Frank and Jim Satterfield were acting on behalf of the corporate defendants with respect to any and all contacts with Washington State?

2. Does the mere passing of a Franchise Protection Act statute in Washington State that purports to create personal liability and jurisdiction over corporate employees where it otherwise would not exist, affect the employees' ability to reasonably foresee that they may be haled into court in Washington?

PARTIES

Frank Satterfield and Jim Satterfield petition the United States Supreme Court to grant a Writ of Certiorari to review a judgment against the petitioners, individually by Richard S. Huebner, et ux., respondents herein.

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OPINION BELOW

Petitioners herein seek review from a decision of the Washington State Court of Appeals, Division II, Huebner, et ux. v. Sales Promotion, Inc., et al., 38 Wn. App. 66, ___ P.2d ___ (1984), and the Washington Supreme Court's denial of a timely Petition for Review. Huebner, et ux. v. Sales Promotion, Inc., et al., 103 Wn.2d 1018 (1985), which decisions affirmed the trial court's entry of summary judgment against petitioners (defendants) Frank and Jim Satterfield in the Superior Court of Washington, Thurston County, Cause No. 80-2-00685-9.

JURISDICTION

(i) Petitioners seek review of the final order entered in the Superior Court of Washington, in and for Thurston County, cause number 80-2-00685-9, entered on

November 30, 1981, and affirmed by Washington Court of Appeals by decision dated July 3, 1984.

(ii) The Washington Court of Appeals denied reconsideration of the decision on December 4, 1984, and a petition for discretionary review was denied by the Washington Supreme Court on February 1, 1985, which terminated state court review of the case.

(iii) The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional provisions and statutes relied upon include the Due Process Clause contained in the United States Constitution, Amend. 14, Sec. 1;

portions of the Franchise Investment Protection Act of the State of Washington (RCW 19.100, et seq.); and the Washington statutes pertaining to out-of-state service of process and jurisdiction over non-residents. (Long Arm) (RCW 4.28.180; RCW 4.28.185). These provisions and statutes are set forth in the Appendix hereto.

STATEMENT OF THE CASE

1. Procedural History.

This suit was commenced by filing summons and complaint on June 20, 1980, later amended, which alleged that the petitioners hereto had failed to register the sale of a franchise as required by the Revised Code of Washington, Title 19. (RCW 19.100.020.) Service of process was obtained by out-of-state service personally on all defendants, as allowed by RCW 19.100.160, and affidavits

of service were filed in accordance with Washington out-of-state service provisions. (RCW 4.28.180; 4.28.185.) The petitioners answered the complaint by denying the allegations and moving to dismiss for lack of personal jurisdicton.

Petitioners noted a motion to dismiss for lack of jurisdiction. Respondents at the same time moved for partial summary judgment for the unlawful sale of an unregistered franchise. These motions were based upon voluminous affidavits and memoranda.

The Superior Court of Washington for Thurston County heard argument on the consolidated motions on April 16, 1981 and again on June 25, 1981. Plaintiffs were granted their motion for partial summary judgment for unlawful sale of unregistered franchise. Defendants' motion for lack of personal jurisdiction,

was denied, except that the defendants' wives were individually dismissed. The corporate defendants and Jim and Frank Satterfield filed a notice for discretionary review with the Washington Supreme Court, which was denied.

Having reserved matters as to damages in the original order, the case was again brought on for hearing November 30, 1981, and the court entered final judgment against the remaining corporate and individual defendants (petitioners) for $81,163.71 which included costs and $23,180.13 in attorneys' fees.

From this judgment, and the earlier denial of petitioners' motion to dismiss, the defendants filed a timely notice of appeal to Division II of the Washington State Court of Appeals.

The court of appeals affirmed the trial court's order of partial summary

judgment by opinion dated July 3, 1984. The court of appeals also affirmed the trial court's findings that personal jurisdiction existed over the individual defendants, Frank and Jim Satterfield.

A timely petition for reconsideration of the personal jurisdiction issue after the individual defendants Frank and Jim Satterfield only was made. The petition was denied by order dated December 4, 1984.

Pursuant to the denial of reconsideration, petitioners Frank and Jim Satterfield, individually, sought discretionary review of the issue of personal jurisdiction in the Washington Supreme Court. Accordingly, Frank and Jim Satterfield submitted a timely petition for review to the Washington Supreme Court in accordance with the Washington Rules of Appellate Procedure.

On February 1, 1985, the Petition for Review was denied by the Washington Supreme Court, terminating review and petitioners now seek the United States Supreme Court's review of the judgment.

2. Factual History.

Defendant Tire Cosmotology, Inc. [hereinafter called "TCI"] is a Texas corporation with its office located at 2862 Hagle, Dallas, Dallas County, Texas, which is a parent manufacturing company of tire customizing equipment and related products. All record keeping and business is conducted in the Texas offices. All corporate employees work in Texas. TCI owns no property in the state of Washington and merely manufactures and sells its products to defendant Sales Promotion, Inc. Sales Promotion, Inc. [hereinafter called "SPI"] did business under the name Tire Cosmotology Rentals.

SPI advertised in national magazines about its tire customizing equipment rentals. In response to an ad in Money magazine, plaintiffs Richard Huebner and his wife contacted defendants in Dallas. Frank Satterfield, in his capacity as Vice-President in Charge of Marketing, called Mr. Huebner and explained the company programs and invited him to Texas to discuss the SPI's owner-operator, distributor and rental programs. A complete information package was sent to plaintiff and a follow-up call was made on Jaunary 2, 1980. At that time Mr. Huebner advised defendant Frank Satterfield that he would be in Dallas, Texas on Jaunuary 3, 1980 to investigate another business opportunity and arrangements were made to meet with defendants in Dallas.

At the Dallas meeting, both Mr. and Mrs. Huebner expressed an interest in the program but declined to enter it at that time.

On or about January 25, 1980, Frank telephoned Mr. Huebner and indicated that the rental program which had been discussed had been changed. Mr. Huebner expressed interest in the program, and stated that he would call back the same day. A written proposal was sent. On January 27, 1980, Frank Satterfield received a telephone call from the plaintiffs in which they accepted the offer which had been made. Mr. Huebner expressed a desire to come to Dallas on January 29, 1980, to sign the agreements and undergo the training required with respect to the rental program. Both Huebners came to Dallas and signed the agreement with SPI.

The agreement, as well as all other documents, were signed by the plaintiffs in Dallas, Texas, on January 29, 1980. The agreement was between Tire Cosmotology Rentals (the d/b/a of Sales Promotion, Inc.) and the plaintiffs.

Jim Satterfield was president of both TCI and SPI. At no time did he sign any documents or perform any duties outside his corporate capacity. No documents produced by plaintiffs show otherwise. Although Jim Satterfield was the president and owner of both corporations, he had limited contact with the Huebners except when he met with them in Texas. TCI and SPI had been in operation for over 6-1/2 years at the time of the hearings before the trial court and had sold approximately 2,500 units to 1,500 customers.

Jim Satterfield, has never been to the State of Washington, and he has never submitted himself to the jurisdiction of this state in any fashion. His only contact with this state has been in the capacity of President of TCI and SPI. He arranged for advertisements to be placed in national magazines and he signed the Huebner agreement. These are his only contacts with Washington in regard to the subject of this litigation.

With respect to Frank Satterfield, he has no equity or ownership interest in TCI or SPI, he is not a shareholder or director in either corporation. Frank Satterfield title was Vice-President of Marketing, which he classified as a "glorified sales representative." He had no authority to enter agreements including any agreement with Mr. Huebner. Defendant Frank Satterfield

also has had no personal contact with the State of Washington. He has never been to Washington, does not own property in Washington. and his only contact has been several calls to Mr. Huebner in relation to Mr. Huebner's decision to come to Texas and enter into the General Partnership Agreement. Frank Satterfield did not sign nor become a party to the agreement with the plaintiffs, nor did he gain a proprietary interest in the performance of the contract.

THE MANNER FEDERAL QUESTIONS WERE RAISED

Petitioners herein raised the pertinent federal questions as follows: The petitioners answered the respondent's complaint by denying all the material allegations and moved to dismiss for lack of personal jurisdiction on federal Constitutional Due Process grounds. The petitioners then noted a motion to

dismiss for lack of jurisdiction. The motion was denied, and the trial judge granted the plaintiff's countermotion for summary judgment on liability.

Timely appeal was taken to the Washington State Court of Appeals and lack of personal jurisdiction was again argued. By decision dated July 3, 1984, the Court of Appeals affirmed the trial court's denial of the petitioner's motion to dismiss, 38 Wn. App. 66, _____ P.2d _____ (1984).

A timely petition for reconsideration was filed and denied on December 4, 1984, and a petition for discretionary review was denied by the Washington Supreme Court dated February 1, 1985. 103 Wn.2d 1018 (1985). Both the petition for reconsideration and the petition for discretionary review argued lack of

personal jurisdiction over the petitioners herein.

REASONS FOR ALLOWANCE OF THE WRIT OF CERTIORARI

A. The Washington Court of Appeals Has Erred by Affirming the Trial Court's Assertion of Personal Jurisdiction of Individual Defendants and Thus Acted Inconsistently with the Due Process Clause of the United States Constitution and the United States Supreme Court Cases Thereunder.

For a petition for a writ of certiorari to be be granted, a petitioner must show proper grounds under 28 U.S.C. § 1257(3) and Supreme Court Rule 17. One such ground is where a state court has decided a question under the United States Constitution in a way repugnant to the Constitution, as interpreted by the Supreme Court of the United States.

The Due Process clause of the United States Constitution requires that for a non-resident defendant to be subject to the jurisdiction of the state courts, the defendant must have certain "minimum contacts" with the forum state. International Shoe Co. v. Washington, 326 U.S. 310 90 L. Ed. 95, 66 S. Ct. 154 (1945). Unless a defendant's contacts are so pervasive as to subject him to "general jurisdiction" in the forum state, the minimum contacts must arise out of the subject matter of the litigation. Snaffer v. Hietner, 443 U.S. 186, 53 L. Ed. 2d 683, 97 S. Ct. 2569 (1977); Helicopteros Nacionales de Columbia v. Hall, ___ U.S. ___, 80 L. Ed. 2d 404, 104 S. Ct. 1868 (1984). Contacts may not be aggregated among defendants; the minimum contacts test must be satisfied as to each defendant. Rush v.

Savchuk, 444 U.S. 320, 62 L. Ed. 2d 516, 100 S. Ct. 571 (1980). Finally, the contacts of a corporation may not be attributed to owners or employees of a corporation, unless the corporation is shown to be the "alter ego" of the individual defendants such that the attribution does not offend traditional notions of fair play and substantial justice. Lakota Girl Scouts Council, Inc. v. Havey Fund-Raising Management, Inc., 519 F.2d 634, 637 (8th Cir. 1975); Accord, Cannon Mfg. Co. v. Cudahy Packing Co., 267 U.S. 333, 45 S. Ct. 250, 69 L. Ed. 634 (1925).

1. The Court of Appeals Impermissibly Aggregated Contacts Between the Individual Petitioners and the Corporate Defendants.

As stated above, contacts may not be aggregated between defendants. Rush v. Savchuk, supra. Contacts of a

corporation may not be attributed to individual owners or employees absent a complete lack of separateness or "alter ego" nature in the relationship. Lakota Girl Scouts Council, supra. See also, Cannon Mfg. Co. v. Cudahy Packing Co., supra,.

Since the sole contacts of the petitioners Frank and Jim Satterfield with the state of Washington were at the behest of the corporation for the benefit of the corporation and within the scope of the employees' labors for the corporation, any contacts that are the corporation's may not be aggregated to the individuals. There are no allegations in this lawsuit that either SCI nor TCI were the "alter ego" of Jim Satterfield, and Frank Satterfield had no ownership or beneficial interest in either corporation.

Recurring throughout Supreme Court opinions in due process/personal jurisdiction cases is discussion regarding how non-residents have "availed themselves of the privileges and benefits of the forum states." See, e.g. Hanson v. Denkla, 357 U.S 235, 2 L. Ed. 2d 1283, 78 S. Ct. 1228 (1958). This was recently reiterated in World-Wide Volkswagon v. Woodson, 444 U.S. 286, 62 L. Ed. 2d 490, 100 S. Ct. 559 (1980), where the Court held that to be subject to the personal jurisdiction of the forum court, the defendant must have purposefully availed himself of the "privilege of conducting activities within the forum state." World-Wide Volkswagon, supra, at 297.

In the present case it cannot and should not be said that the individuals, Frank and Jim Satterfield, availed themselves of the privileges of

Washington State. Any activities that led to contact within Washington were the corporation's contacts, not the individuals. For a contact to be a contact, it must, under World-Wide Volkswagon, supra, have arisen out of a purposeful acceptance of the privileges and benefits of the forum state.

This argument is consistent with the statement contained in International Shoe v. Washington, supra, that an assertion of personal jurisdiction must comport with with "traditional notions of fair play and substantial justice." That is, when one invokes the privileges and benefits of the forum, he also takes on the burden of potential litigation in that forum. But can it be said that where, as here, all activities of individuals were attempts to invoke privileges and benefits of Washington for

the corporate defendants and no personal benefits or privileges, that imposition of the burden of litigation in Washington on the individual's comports with the traditional notions of fair play and substantial justice? Aggregation of the corporations' invocation of benefits and privileges of Washington State, upon the petitioners herein, in order to vicariously attribute corporate contacts to the individuals is contrary to the express holdings and policies of Rush v. Savchuk, supra; Cannon Mfg. Co. v. Cudahy Packing Co., supra; and Lakota Girl Scouts Council, Inc. v. Havey Fund-Raising Management, Inc., supra.

2. Minimum Contacts Standard was not Satisfied.

All assertions of personal jurisdiction over non-residents are to be evaluated under the "minimum contacts"

rule elucidated in International Shoe v. Washington, supra. Shaffer v. Heitner, 433 U.S. 186, 53 L. Ed. 2d 683, 97 S. Ct. 2569 (1977). The minimum contacts must be present as to each defendant. Rush v. Savchuk, 444 U.S. 320, 62 L. Ed. 2d 516, 100 S. Ct. 571 (1980).

There are insufficient contacts to sustain an assertion of personal jurisdiction in this case. Even assuming, but not conceding, that the contacts of the corporate defendants may be attributed to the individuals notwithstanding their not "availing themselves of the benefits and privileges of the benefits and privileges" of Washington State, the contacts are insufficient to justify assertion of personal jurisdiction consistantly with the Due Process Clause.

The Supreme Court has stated that the minimum contacts test is not susceptable to mechanical application. Kulko v. Superior Court, 436 U.S. 84, 56 L. Ed. 2d 132, 98 S. Ct. 1690 reh. den. 438 U.S. 908, 57 L. Ed. 2d 1150, 98 S. Ct. 3127 (1978). Nevertheless, the circuit courts have recognized various "factors" as indicia of minimum contacts. See, e.g. Davis H. Elliot Co. v. Caribbean Utilities Co., 513 F.2d 1176 (6th Cir. 1975). In addition, Shaffer v. Heitner, supra, has recognized that the pertinent inquiry is the relationship between the defendant, the forum and the litigation. Accord, Calder v. Jones, ___ U.S. ___, 79 L. Ed. 2d 804, 104 S. Ct. 1482 (1984). Among the pertinent lines of inquiry involving this relationship is the quantity of contacts, the quality and nature of the contacts, the relationship

of the contacts to the cause of action, and the reasonableness/convenience of the forum's haling the defendants into court.

With respect to Frank Satterfield, his sole actions were making several phone calls to Richard Huebner, a mailing to Huebner, and conducting informational meetings a few times in Texas. Frank Satterfield never went to Washington. Perhaps more importantly, Frank Satterfield had no authority and/or responsibility for the registering of the "franchise," the failure of which gave rise to the litigation. In this sense, serious questions arise as to whether the contacts Frank Satterfield had, if any, bore a sufficient nexus with the subject of the litigation to justify a finding of any contact, let alone "minimum contacts." Shaffer v. Hietner, supra.

Frank Satterfield had only a few actions which remotely involved Washington. These contacts were sales-related, not related to the registration or non-registration of the franchise. Frank Satterfield, unlike the writer and editor in Calder v. Jones, _____ U.S._____, 79 L. Ed. 2d 804, 104 S. Ct. 1482 (1984), is truly the "hypothetical welder," whose boiler blows up outside of the forum. This case does not the sort of intentional or tortious (malicious defamation) act that predicated the rejection of the defendants' "mere employee" argument in Calder. ____ U.S. _____, 79 L. Ed. 2d at 812.

The "reasonableness" of haling Frank Satterfield into court in Washington is also dubious: If the Washington courts can hale Frank Satterfield into court

solely by virtue of his employment with a corporation based upon a personal liability (franchise act) statute in the forum state, Frank Satterfield would be subject to the jurisdiction of all 50 states which have a statute authorizing personal liability of employees as long as SPI transacted business in the state. This stretches the term "reasonableness" beyond any notion of what the word means and significantly infringes upon traditional notions of fair play and substantial justice.

Jim Satterfield's actions involving Washington were also insufficient to justify an assertion of jursidiction. He had contacts with the State of Washington; however, except for a few actions taken in the Huebner sale, all contacts involved unrelated sales and business dealings. While the Washington

Court of Appeals recognized the distinction, it is clear that the contacts that were unrelated to the Huebner sale were considered by the court:

> Jim Satterfield was responsible for the advertisements in Washington which led Huebner to sign his dealer agreement. Jim also offered and negotiated other neutral agreements with Washington residents. While these acts are not directly relevant to a jurisdictional analysis in this case, they do tend to belie his general contention that his activities were confined to Texas.

Huebner v. Sales Promotion, Inc., 38 Wn. App. 66, 71, ____ P.2d _____ (1984). Besides these unrelated contacts, Jim Satterfield had two actions of pertinence to this lawsuit: He placed an ad in Money magazine; and he signed the agreement on behalf of the corporate defendant. Can it be said that these contacts are of the quantity, quality and

nature to justify an assertion of jurisdiction consistent with the reasonablness standard and with traditional notions of fair play and substantial justice?

3. Mere Passage of a Liability Statute does not Give Rise to a Foreseeability of Being Haled into Court.

Personal jurisdiction in this case is invoked by virtue of the Washington Franchise Investment Protection Act. RCW 19.100.160 purports to pierce a defendant's corporate veil and subject the corporate officers and others to jurisdiction in Washington. RCW 19.100.160 purports to create individual liability under the "any person" section and then bring the person before the courts of Washington under its long arm language.

It is well-settled that a long-arm statute may only extend jurisdiction as far as is allowable by virtue of the due process requirement of consistency with traditional notions of fair play and substantial justice. Haynes v. James H. Carr, Inc., 427 F.2d 700 (4th Cir. 1970). Moreover, statutes that purport to pierce a corporate veil have been held "totally inappropriate for establishing personal jurisdiction over an individual who lives and works elsewhere." Stanley Works v. Globemaster, Inc., 400 F. Supp. 1325, 1336 (D. Mass. 1975). The situation in Stanley, like the present case, is distinguishable from the "alter ego" justification for aggregation of corporate and individual (owner) contacts. Where an "alter ego" situation exists, there is a lack of separateness in fact. In contrast, a personal

liability statutes creates separateness in law and must comport with the due process clause when contacts are analyzed.

In the present case, the Court of Appeals considered Stanley, but distinguished it holding that minimum contacts were satisfied as to Jim and Frank Satterfield absent the veil-piercing provisions of RCW 19.100.160. However, since the individual defendants, petitioners Frank and Jim Satterfield, did not avail themselves, personally, of the privileges and benefits of Washington State, and acted only for the corporate defendants, any contacts involving the agreement that gave rise to this litigation do not and should not be sufficient to support long arm jurisdiction.

B. Conclusion.

Petitioners Frank and Jim Satterfield respectfully ask the United States Supreme Court to grant a writ of certiorari and hear their appeal of the decisions of the Washington courts.

Respectfully submitted,

CRANE, STAMPER, BOESE, DUNHAM & ROGERS

By _____
Douglas S. Dunham
Attorney for
Petitioners

4159D

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

No. 6054-0-II

RICHARD S. HUEBNER, ET AL.,
Respondents,
vs.
SALES PROMOTION, INC., ET AL.,
Appellants.

OPINION

Appeal from the Superior Court of
Washington for Thurston County

[1] Franchises -- License -- What Constitutes. For purposes of RCW 19.100.010(4), which defines a franchise as a license to use certain names or marks, a "license" is a right to use an object as one's own with a proprietary interest in the object used.

[2] Franchises -- Jurisdiction -- Nonresidents -- Due Process -- Foreseeability of Injury. Asserting personal jurisdiction over nonresident defendants under RCW 19.100.160 of the Franchise Investment Protection Act does not offend due process protections if the defendants' out-of-state conduct has sufficient impact in this state that the defendants could reasonably foresee being required to answer in this state's courts for harm flowing

from their activities.

[3] Corporations -- Disregarding Corporate Entity -- Individual Actions. Personal jurisdiction and personal liability of corporate officers does not result from piercing the corporate veil when the action is based on the actions of the officers as individuals.

[4] Courts -- Jurisdiction -- Agreement as to Applicable Law -- Effect. A contract provision providing that the law of a foreign jurisdiction will govern disputes is not determinative as to questions of jurisdiction.

[5] Appeal and Error -- Assignments of Error -- Argument -- Necessity. Assignments of error not argued in the appellant's brief are deemed abandoned.

Nature of Action: A franchisee of a tire customizing business sought damages and rescission from the franchisors who were a foreign corporation and nonresident individuals.

Superior Court: The Superior Court for Thurston County, No. 80-2-00685-9, Orris L. Hamilton, J. Pro Tem., entered a summary judgment in favor of the plaintiff on November 30, 1981.

Court of Appeals: Holding that the trial court properly asserted jurisdiction over the defendants in both their corporate and individual capacities, the court affirms the judgment.

Douglas S. Dunham, for appellants.

David Lieberworth, for respondents.

WORSWICK, J. -- In January 1980, Richard Huebner signed a partnership

agreement with Tire Cosmotology Rental (TCR) for the purpose of permitting Huebner to rent tire customizing machines to others in Washington. TCR is the name under which Sales Promotion, Inc. (SPI) does business. SPI is a corporate subsidiary of Tire Cosmotology, Inc. (TCI), a Texas corporation. Huebner contributed $100,000 to the partnership, and TCR provided 100 tire customizing machines. The agreement requied Huebner to place all the machines with rental customers within 365 days or be in default. Upon default, TCR was entitled to terminate the agreement upon paying Huebner 25 percent of his original investment. Huebner negotiated the agreement with Jim and Frank Satterfield, TCI's president and SPI's vice-president, respectively.

In June 1980, Huebner and his wife

Irene sued TCI, SPI and Jim and Frank Satterfield for damages and rescission, contending that the agreement violated Washington's Franchise Investment Protection Act (FIPA). RCW 19.100. There being no disputed facts, the trial court granted the Huebners' motion for summary judgment, holding that defendants had unlawfully offered and sold Huebner a franchise not registered in Washington, in violation of RCW 19.100.010 et seq. On this appeal, defendants contend that the trial court erred in concluding that the partnership agreement is a franchise, and in asserting personal jurisdiction over them. We affirm.

It is unlawful to sell or offer to sell any franchise in Washington unless the offer has been registered or exempted under RCW 19.100.030 et seq. RCW 19.100.020. RCW 19.100.190 provides

in part:

> (2) Any person who sells or offers to sell a franchise in violation of this chapter shall be liable to the franchisee or subfranchisor who may sue at law or in equity for damages caused thereby for rescission or other relief as the court may deed appropriate.

Defendants did not register or seek exemption of any franchise. Therefore, if the partnership agreement is a franchise as defined in the FIPA, the Huebners were entitled to damages and rescission. Defendants contend the FIPA does not apply because their agreement with Huebner is not a franchise. We disagree.

[1] RCW 19.100.010(4) defines "franchise":

> (4) "Franchise" means an oral or written contract or agreement, either expressed or implied, in which a person grants to another person, a license to use a trade name,

> service mark, trade mark, logotype or related characteristic in which there is a community interest in the business of offering, selling, distributing goods or services at wholesale or retail, leasing, or otherwise and in which the franchisee is required to pay, directly or indirectly, a franchise fee; . . .[1]

"License" in the context of the statute means the right to use as if one's own; it implies a proprietary interest in the trade name, trademark or logotype. Lobdell v. Sugar 'N Spice, Inc., 33 Wn. App. 881, 658 P.2d 1267 (1983).

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[1]Defendants merely claim they did not grant Huebner a license to use their trademarks. They do not contend there was no "community interest" as contemplated by the statute or that Huebner was not required to pay a franchise fee.

Defendants gave Huebner directions regarding his use of their trademarks. The directions provided in part:

> You may refer to yourself as an "Authorized TIRE CUSTOMIZING Specialist," if you have contemplated the necessary training.

The term "TIRE CUSTOMIZING" is a TCI trademark.[2] Defendants granted Huebner a proprietary interest in that term. As long as Huebner did not violate the agreement, he could use it as his own. Therefore, defendants granted Huebner a license to use their trademark. Lobdell v. Sugar 'N Spice, Inc., supra. The trial court did not err in concluding that defendants sold Huebner a franchise.

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[2]At oral argument, counsel for defendants claimed the term "TIRE CUSTOMIZING" is not a TCI trademark. There is no merit to this contention. TCI's advertising identified the term as a trademark by the letters "TM".

Defendants next contend that the trial court erred in exercising personal jurisdiction over them. We disagree.

RCW 19.100.160 provides in part:

> Any person who is engaged or hereafter engaged directly or indirectly in the sale or offer to sell a franchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to the provisions of this chapter, shall be amenable to the jurisdiction of the courts of this state and shall be amenable to the service of process under RCW 4.28.180, 4.28.185 and 19.86.160.

RCW 4.28.185 provides in part:

> (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of said acts:
>
> (a) The transaction of any business within this state;

Under the long-arm statute, RCW 4.28.185, Washington courts may assert jurisdiction over nonresident individuals and foreign corporations to the extent permitted by the due process clause of the United States Constitution, except as limited by the terms of the statute. Deutsch v. West Coast Mach. Co., 80 Wn.2d 707, 497 P.2d 1311, cert. denied, 409 U.S. 1009 (1972). RCW 19.100.160 is plainly broad enough to confer jurisdiction over all defendants. The issue is whether constitutional due process imposes a barrier as to some or all of them. We find none.

[2] Due process requires that a defendant be given notice of the suit and be subject to the personal jurisdiction of the court. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 94 L. Ed. 865, 70 S. Ct. 652 (1949); International

Shoe Co. v. Washington, 326 U.S. 310, 90 L. Ed. 95, 66 S. Ct. 154, 161 A.L.R. 1057 (1945). A state court may exercise personal jurisdiction over a nonresident only if there are minimum contacts between the defendant and the forum state of such character that maintenance of the suit does not offend traditional notions of fair play and substantial justice. International Shoe Co. v. Washington, supra. The forum court may not aggregate the contacts of multiple defendants, i.e., the requirements of International Shoe must be met as to each defendant over whom a state court asserts jurisdiction. Rush v. Savchuk, 444 U.S. 320, 62 L. Ed.2d 516, 100 S. Ct. 571 (1980). The defendant's conduct and connection with the forum state must be such that he should reasonably foresee being haled into court there. World-Wide

Volkswagen Corp. v. Woodson, 444 U.S. 286, 62 L. Ed. 2d 490 100 S. Ct. 559 (1980). When a corporation purposefully avails itself of the privilege of conducting activities within the forum state, it has clear notice that it is subject to suit there. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. at 297.

The corporate defendants here certainly had notice that they were subject to suit in Washington. Both TCI and SPI solicited business here through magazine advertisements and personal contacts with Washington residents. SPI arranged for rental dealerships in Washington, and TCI shipped tire customizing machines into the state. SPI and TCI are plainly subject to Washington jurisdiction.

We are satisfied that the contracts of the individual defendants were also sufficient to confer jurisdiction over them upon the Washington courts. Jim Satterfield was responsible for the advertisements in Washington which led Huebner to sign his rental dealer agreement. Jim also offered and negotiated other rental agreements with Washington residents. While these acts are not directly relevant to a jurisdictional analysis in this case, they do tend to belie his general contention that his activities were confined to Texas. Frank Satterfield contacted Huebner and other Washington residents regarding tire customizing rental agreements. The trial court did not err in asserting jurisdiction. See World-Wide Volkswagen Corp. v. Woodson, supra; Thornton v. Interstate Sec. Co.,

35 Wn. App. 19, 666 P.2d 370 (1983); Sorb Oil Corp. v. Batalla Corp., 32 Wn. App. 296, 647 P.2d 514 (1982).

Frank Satterfield contends that he did not have sufficient contacts with Washington to support personal jurisdiction over him. He emphasizes that he has never been in Washington, and likens himself to an office secretary who merely corresponds occasionally with out-of-state residents by telephone and mail. We disagree.

Personal jurisdiction need not be predicated on a defendant's presence in the forum state. Jurisdiction may be asserted where a defendant's out-of-state conduct causes harm in the forum state. Calder v. Jones, _____ U.S. ___, _____ L. Ed. 2d _____, 104 S. Ct. 1482 (1984). Frank's activities were not similar to those of an office secretary.

He did not merely fill in blanks on a form contract, but was a primary participant in the offer and sale of an unregistered franchise - the very conduct proscribed by the FIPA. The fact that he conducted these activities in Texas does not preclude Washington from exercising jurisdiction over him where the harm was suffered in Washington. The focal point and end product of his activity - as well as that of all other defendants - was a "partnership" agreement, the primary activities of which were to be conducted in Washington. The harm that would flow from these activities would foreseeably occur in Washington. Calder v. Jones, supra; RCW 19.86.160.

[3] Frank and Jim contend that the trial court erred in piercing the corporate veil to exercise personal jurisdiction over them, citing Stanley

Works v. Globemaster, Inc., 400 F. Supp. 1325 (D. Mass. 1975). We disagree. Stanley is distinguishable. In Stanley, the court held that personal jurisdiction could not be exercised over the individual defendants because they lacked the requisite minimum contacts with Massachusetts. Stanley Works v. Globemaster, Inc., 400 F. Supp. at 1336. The court also refused to pierce the corporate veil, i.e., find personal jurisdiction over the individual defendants simply because the court had personal jurisdiction over the corporation for which they worked. Stanley Works v. Globemaster, Inc., 400 F. Supp. at 1336. In contrast, the trial court here analyzed the personal contacts of Frank and Jim individually and, as we have previously noted, found them sufficient. The trial court did not

assert personal jurisdiction over them merely because they worked for a corporation subject to Washington jurisdiction.

Frank and Jim also claim they did not have sufficient contact with Washington because all their contacts were based on their roles as corporate officers. We disagree. While Jim and Frank's contacts with Washington should not be judged by their employer's activities, neither does their status as employees insulate them from jurisdiction. Calder v. Jones, supra; Rush v. Savchuk, 444 U.S. 320, 62 L. Ed. 2d 516, 100 S. Ct. 571 (1980). Again, when their individual activities are examined, it is apparent that Frank and Jim each had sufficient contacts with Washington to support personal jurisdiction over them.

[4] Finally, all defendants contend that they did not anticipate being subject to Washington's jurisdiction because the partnership agreement with Huebner provided that Texas law would govern. Therefore, they claim the trial court erred in asserting jurisdiction, citing World-Wide Volkswagen Corp. v. Woodson, supra. We disagree. World-Wide Volkswagen Corp. did not create a subjective test for determining jurisdiction. The test is still objective, i.e., whether a defendant, based on his contacts with the forum state, should reasonably anticipate being haled into court there. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. at 297. The choice of law clause in the partnership agreement says nothing about jurisdiction and does not suppport defendants' contention.

[5] Defendants assigned error to the trial court's denial of their motion to dismiss for improper venue and for failure to state a claim. This assignment was not argued in defendants' brief and is deemed abandoned. Pappas v. Hershberger, 85 Wn.2d 152, 530 P.2d 642 (1975).

The Huebners have requested attorney's fees and costs pursuant to RCW 19.100.190(3) and RAP 18.1, and have complied with RAP 18.1. We award them attorney's fees of $7,777.10 on appeal against all appellants.

WASHINGTON STATE COURT OF APPEALS
DIVISION II

No. 6054-0-II

RICHARD S. HUEBNER, et ux., Respondents, vs. SALES PROMOTION, INC., et al., Appellants.	)	NO. 6045-0-II ORDER DENYING MOTION FOR RECONSIDERATION

THE COURT has considered this motion for reconsideration and has determined that it should be denied. Accordingly, it is

ORDERED that the motion is denied.

DATED this 4th day of December, 1984.

/S/
CHIEF JUDGE

cc: David Leiberworth
Douglas S. Dunham

WASHINGTON STATE COURT OF APPEALS
DIVISION II

No. 6054-0-II

RICHARD S. HUEBNER, et ux., Respondents, vs. SALES PROMOTION, INC., et al., Appellants.	)	NO. 6045-0-II MANDATE

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on July 3, 1984, became the decision terminating review of this court of the above entitled case on February 1, 1985. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

cc: Douglas S. Dunham
Attorney at Law
350 Grand Central on the Park
Seattle, WA 98104

David Leiberworth
Attorney at Law
1900 Washington Bldg.
Seattle, WA 98101

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court at Tacoma, this 13th day of February, 1985.

/S/
Clerk of the Court of Appeals,
State of Washington, Div. II

The Supreme Court
State of Washington
Olympia

February 1, 1985

Crane, Stamper, Boese,
Dunham & Rogers
Mr. Douglas S. Dunham
350 Grand Central on the Park
Seattle, Washington 98104

Perkins, Coie, Stone, Olsen
& Williams
Mr. David Leiberworth
1900 Washington Building
Seattle, Washington 98101

Re: Supreme Court. No.5 51277-9-
Richard S. Huebner, et al. v.
Sales Promotion, Inc., et al.
Court of Appeals No. 6054-0-II

Counsel:

The above entitled petition for review was considered by the Court on its February 1, 1985, petition for review calendar.

The petition was denied by order number 133/59 filed on February 1, 1985.

Very truly yours,

REGINALD N. SHRIVER
Supreme Court Clerk

RNS:tt

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; not shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

RCW 19.100.020 Unlawful to sell or offer to sell franchise if unregistered or not exempt. It is unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless the offer of the franchise has been registered under this chapter or

exempted under RCW 19.100.030. [1971 ex.s. c 252 § 2.]

RCW 19.100.010 Definitions. When used in this chapter, unless the context otherwise requires:

(12) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(14) "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise. [1979 c 158 § 83; 1963 1st ex.s. c 33 § 3; 1972 ex.s. c 116 § 1; 1971 ex.s c 252 § 1.]

RCW 19.100.160 Application of chapter---Jurisdiction---Service of process---Consent. Any person who is engaged or hereafter engaged directly or indirectly in the sale or offer to sell a franchise, or business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to the provisions of this chapter, shall be amenable to the jurisdiction of the courts of this state and shall be amenable to the service of process under RCW 4.28.180, 4.28.185 and 19.86.160.

RCW 4.28.180 Personal service out of state. Personal service of summons or other process may be made upon any party outside the state. If upon a citizen or resident of this state or upon a person who has submitted to the jurisdiction of the courts of this state, it shall have

the force and effect of personal service within this state; otherwise it shall have the force and effect of service by publication. The summons upon the party out of the state shall contain the same and be served in like manner as personal summons within the state, except it shall require the party to appear and answer within sixty days after such personal service out of the state. [1959 c 131 § 1; 1895 c 86 § 3; 1893 c 127 § 11; RRS § 234.]

RCW 4.28.185 Personal service out of state---Acts submitting person to jurisdiction of courts---Saving. (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his personal representative, to the

jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

(a) The transacion of any business within this state;

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the defendant outside this state, as provided in RCW 4.28.180, with the same force and effect as though personally served within this state.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.